

3 February 2009

Department of Finance & Administration  
Financial Control Division  
Central Payroll Bureau  
Bataan Memorial Building, Suite 166  
407 Galisteo Street  
Santa Fe, NM 87501

Public records request

This is a request for records under the New Mexico Inspection of Public Records Act.

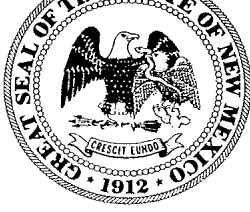
I request a copy of a list including the name, salary, job title, and (if available) agency or department and town of duty station for each employee of the State of New Mexico. A list prepared for calendar year 2008, fiscal year 2008, or a current list would all satisfy this request.

If this data in the record is easy to prepare in an accessible electronic format, I would prefer the records on CD as an excel spreadsheet, microsoft access database, text, or, as a last resort, PDF.

I am requesting these records for personal use, not to further a commercial interest. I hope that records of this sort are compiled routinely, and can be duplicated without great expense. I am willing to pay fees for the processing of this request up to \$20. If you anticipate the fees will exceed that amount please inform me first.

Thank you in advance for your help.

Sincerely,



**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**OFFICE OF THE SECRETARY**  
BATAAN MEMORIAL BUILDING, SUITE 180 SANTA FE, NM 87501  
(505) 827-4985 FAX (505) 827-4984

**BILL RICHARDSON**  
GOVERNOR

**KATHERINE B. MILLER**  
CABINET SECRETARY

February 9, 2009

*Via Mail*

On February 5, 2009 our office received your request via mail for a list of employees of the State of New Mexico consisting of their name, salary, job title, agency, and duty station. Pursuant to the Inspection of Public Records Act, a response will be forthcoming within 15 days of our receipt of your request.

Sincerely,

  
Nicole Gillespie  
Senior Policy Analyst



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## Request for Public Records

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Gillespie, Nicole, DFA <Nicole.Gillespie@state.nm.us>

Mon, Feb 23, 2009 at 12:32 PM

To: [d@gmail.com](mailto:d@gmail.com)

Please find the attached letter in response to your request for public records. Feel free to contact me with any questions.

Thank you-

Nicole Gillespie

Senior Policy Analyst

NM Department of Finance and Administration

Office: 505-827-3881

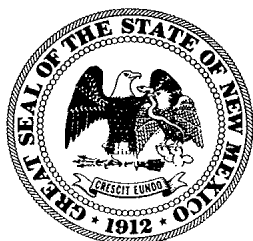
Cell: 505-660-0122

Confidentiality Notice: This e-mail, including all attachments is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited unless specifically provided under the New Mexico Inspection of Public Records Act. If you are not the intended recipient, please contact the sender and destroy all copies of this message. -- This email has been scanned by the Sybari - Antigen Email System.



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**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
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**BILL RICHARDSON**  
GOVERNOR

**KATHERINE MILLER**  
CABINET SECRETARY

February 20, 2009

**BY REGULAR MAIL AND EMAIL [ \_\_\_\_\_@GMAIL.COM]**

RE: Your Request for Information from the S.H.A.R.E. Database

On February 5, 2009, the Department of Finance and Administration (DFA) received your request for "a copy of a list including the name, salary, job title, and (if available) agency or department and town of duty station for each employee of the State of New Mexico. A list prepared for calendar year 2008, fiscal year 2008, or a current list would all satisfy this request." You specifically stated a preference for the data in "an accessible electronic format".

At the outset, to the extent your request sought information concerning non-Executive Branch employees, DFA is neither solely nor partially responsible for the requested information concerning the following categories of employees:

- All employees of the Legislative Branch;
- All employees of the Judicial Branch.

In addition, our database does not cover higher education institutions. Please let me know if you are interested in employees of the Legislative and Judicial Branches and higher education institutions, and I can provide you with contact information for these agencies.

Regarding employees of the Executive Branch, DFA is not solely responsible for information concerning employees other than its own. DFA will, accordingly, need to enter into agreements with other state agencies regarding the release of information concerning their employees. For this reason, DFA determines your request to be broad and burdensome and needs additional reasonable time within which to respond. Further, DFA cannot proceed with the request until we receive your response to our questions herein.

The information you requested resides in an information systems database entitled the Statewide Human Resource, Accounting, and Management Reporting System (S.H.A.R.E.). For this reason, this request seeks information contained in an information systems database and is governed by § 14-3-15.1 NMSA 1978 (1995)<sup>1</sup> and the case entitled Crutchfield v. N.M. Dept. of Taxation and Revenue, 2005-NMCA-022, ¶ 24 (N.M. Ct. Appeals 2005).

Regarding requests for an electronic copy of a database, pursuant to Section 14-3-15.1 C. NMSA 1978, the requester needs to agree to the following:

- (1) not to make unauthorized copies of the database;
- (2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;
- (3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;
- (4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and

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<sup>1</sup> Section 14-3-15.1 NMSA 1978 provides:

A. Except as otherwise provided by federal or state law, information contained in information systems databases shall be a public record and shall be subject to disclosure in printed or typed format by the state agency that has inserted that information into the database, in accordance with the Public Records Act [Chapter 14, Article 3 NMSA 1978], upon the payment of a reasonable fee for the service.

B. The administrator shall recommend to the commission the procedures, schedules and technical standards for the retention of computer databases.

C. The state agency that has inserted data in a database may authorize a copy to be made of a computer tape or other medium containing a computerized database of a public record for any person if the person agrees:

- (1) not to make unauthorized copies of the database;
- (2) not to use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database;
- (3) not to use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law;
- (4) not to allow access to the database by any other person unless the use is approved in writing by the state agency that created the database; and
- (5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

D. If more than one state agency is responsible for the information inserted in the database, the agencies shall enter into an agreement designating a lead agency. If the agencies cannot agree as to the designation of a lead state agency, the commission shall designate one of the state agencies as the lead agency to carry out the responsibilities set forth in this section.

E. Subject to any confidentiality provisions of law, any state agency may permit another state agency access to all or any portion of a computerized database created by a state agency.

F. If information contained in a database is searched, manipulated or retrieved or a copy of the database is made for any private or nonpublic use, a fee shall be charged by the state agency permitting access or use of the database.

G. Except as authorized by law or rule of the commission, any person who reveals to any unauthorized person information contained in a computer database or who uses or permits the unauthorized use or access of any computer database is guilty of a misdemeanor, and upon conviction the court shall sentence that person to jail for a definite term not to exceed one year or to payment of a fine not to exceed five thousand dollars (\$5,000) or both. That person shall not be employed by the state for a period of five years after the date of conviction.

5) to pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database.

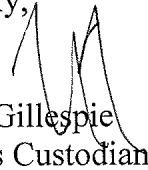
Are you able agree in writing to: i) not have any unauthorized copies of the database made, and; ii) not have anyone use the database for any political or commercial purpose unless the purpose and use is approved in writing by the state agency that created the database and iii) not have anyone use the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law and iv) not allow access to the database by any other person unless the use is approved in writing by the state agency that created the database and v) pay a royalty or other consideration to the state as may be agreed upon by the state agency that created the database? Also, could you please indicate in writing to whom (if anyone) you intend to make the database available? This will also inform the necessary discussion on what an appropriate royalty (if any) might be. This royalty would be separate and apart from the fee required to be charged under Section 14-3-15.1(D), an estimate of which we can provide once we hear from you on these matters.

DFA awaits your response and is unable to proceed with the February 5, 2009 request for information until we are able to reach agreement on the 5 parts of Section 14-3-15.1 C. NMSA 1978. After we do so, then DFA can begin the process, set forth in Section 14-3-15.1 D. NMSA 1978, of entering into agreements with other state agencies with whom we have a shared responsibility for the information inserted into the database.

Finally, please let me know if you would be interested in receiving this information in printed format instead, since that raises different issues.

Please do not hesitate to contact me should you have any questions about this letter.

Sincerely,



Nicole Gillespie  
Records Custodian  
(505) 827-3881



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## Request for Public Records

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@gmail.com>

Mon, Feb 23, 2009 at 5:54 PM

To: "Gillespie, Nicole, DFA" <Nicole.Gillespie@state.nm.us>

Thank you for your response to my request for the New Mexico payroll database.

It is my intention to upload the database wholesale to [archive.org](http://archive.org), as I have recently done with other state payroll databases, <http://www.archive.org/search.php?query=%22salary%20salaries%20state%22> for provision to the public free of charge, and free of cost to the taxpayers of New Mexico.

So far New Mexico is the first state I have corresponded with that has imposed conditions on the distribution of the payroll database. I assure you I do not have a commercial or financial stake in your database, but since distribution of the database is my purpose, I am unwilling to sign a statement authorizing only limited distribution of it.

The thought of charging licensing fees to someone whose interest in improving government transparency by giving public records away is absurd. I ask that you reconsider your conditions for the distribution of your payroll database, which, on their face, would seem to prohibit me from bringing the database to the attention of the press.



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## Request for Public Records

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@gmail.com>

Fri, Mar 13, 2009 at 2:41 PM

To: "Gillespie, Nicole, DFA" <Nicole.Gillespie@state.nm.us>

I am still awaiting an answer to the questions whether the state will waive the non-disclosure requirement and what are the licensing terms for giving the NM state payroll database away.

Further, I'd like an estimate for the records on paper, since printing them out seems to evade certain legal restrictions on public databases.

Thanks for your help so far; I am still surprised and amazed that the open records laws in New Mexico are so sophisticated as to protect the public from certain kinds of openness.

[Quoted text hidden]

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## Request for Public Records

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@gmail.com>

Thu, Mar 26, 2009 at 7:06 AM

To: "Gillespie, Nicole, DFA" <Nicole.Gillespie@state.nm.us>

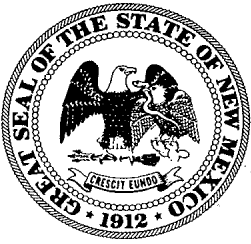
I am still waiting for responses to

- 1) the question will the State waive the nondisclosure requirement for the purpose of distribution of records to the public free of charge
- 2) an estimate for the royalties for such a purpose
- 3) an estimate for the cost of the state payroll database on paper, since different legal issues apply.

At our last phone conversation, you indicated that I was due answers to these queries. When can I expect responses?

[Quoted text hidden]

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**STATE OF NEW MEXICO**  
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(505) 827-4985 FAX (505) 827-4984

**BILL RICHARDSON**  
GOVERNOR

**KATHERINE B. MILLER**  
CABINET SECRETARY

May 1, 2009

RE: Your Request for Information from the S.H.A.R.E. Database

On February 5, 2009, the Department of Finance and Administration (DFA) received your request for "a copy of a list including the name, salary, job title, and (if available) agency or department and town of duty station for each employee of the State of New Mexico. A list prepared for calendar year 2008, fiscal year 2008, or a current list would all satisfy this request." You specifically stated a preference for the data in "an accessible electronic format".

I responded in a letter dated February 20, 2009, in which I:

- Explained that, because it seeks information contained in an information systems database, your request is governed by Section 14-3-15.1 NMSA 1978 (1995), rather than the Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 2. *Crutchfield v. N.M. Dept. of Taxation and Revenue*, 2005-NMCA-022, ¶ 24 (N.M. Ct. Appeals 2005);
- Explained that DFA was not solely or partially responsible for the information contained in the S.H.A.R.E. database concerning employees of the Legislative or Judicial branches of New Mexico state government;
- Explained that institutions of higher education do not utilize S.H.A.R.E. for human capital management;
- Noted that DFA would need to enter into agreements with Executive branch agencies before it could produce information concerning employees other than its own;
- Asked you several specific questions designed to gauge the likelihood that an agreement could be reached under Section 14-3-15.1(C), which controls electronic copies of databases such as the one you requested; and
- Asked you whether you would be interested in obtaining the information you requested in printed format.

You responded by noting that:

"It is my intention to upload the database wholesale to archive.org, as I have recently done with other state payroll databases,  
<http://www.archive.org/search.php?query=%22salary%20salaries%20state%22>  
for provision to the public free of charge, and free of cost to the taxpayers of New Mexico."

You asked these follow-up questions in a March 26, 2009 email:

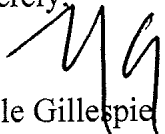
- "1) the question will the State waive the nondisclosure requirement for the purpose of distribution of records to the public free of charge[;]
- 2) an estimate for the royalties for such a purpose[; and]
- 3) an estimate for the cost of the state payroll database on paper, since different legal issues apply."

As previously noted, for your organization to receive the data you seek in an electronic format, prior agreement would need to be reached concerning the items set forth in Section 14-3-15.1(C). In this regard, you should be aware that DFA will not authorize the use of the data for political or commercial purposes or authorize others to make a copy of the database.<sup>1</sup> Moreover, Section 14-3-15.1(C)(3) requires your organization to agree not to use "the database for solicitation or advertisement when the database contains the name, address or telephone number of any person unless such use is otherwise specifically authorized by law". Users of your website, apparently for free, will be able to copy the database, use it for commercial or political purposes, and use it to solicit and advertise. This seemingly precludes the necessary agreement being reached pursuant to Section 14-3-15.1(C). If, however, you feel agreement is possible, please let me know. This seemingly answers your question numbers 1 and 2.

Regarding the estimated cost of the state payroll database in printed format, the cost would be 751 pages at \$.25 per page plus \$17.00 representing the personnel cost incurred for compiling the information, plus the delivery method you choose to have the information delivered to you.

Please let me know how you would like to proceed.

Sincerely,



Nicole Gillespie  
Records Custodian  
(505) 827-3881

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<sup>1</sup> As noted, DFA has not yet entered into agreements, pursuant to Section 14-3-15.1(D), with the agencies with which it is jointly responsible for information in S.H.A.R.E. Consequently, it is not now known which will be the lead agency for purposes of responding to requests made pursuant to Section 14-3-15.1. We anticipate, however, that the agreements with other agencies will prohibit use of the information in the S.H.A.R.E. database for political or commercial purposes, regardless of who is designated the lead agency.

13 May 2009

Nicole Gillespie  
Records Custodian  
Department of Finance & Administration  
Bataan Memorial Building, Suite 180  
Santa Fe, NM 87501

Public records request payment

Thank you for your response to my request for New Mexico public records. You have informed me in earlier correspondence that there are intricate legal issues and constraints restricting the release of the information I requested in electronic formats.

Per your estimate of May 1, 2009, I am enclosing a check for \$204.75, your estimate of the cost of preparing 751 pages of employee/salary records on paper.

Thank you in advance for your help.

Sincerely,



**STATE OF NEW MEXICO**  
**DEPARTMENT OF FINANCE AND ADMINISTRATION**  
**OFFICE OF THE SECRETARY**  
BATAAN MEMORIAL BUILDING, SUITE 180 SANTA FE, NM 87501  
(505) 827-4985 FAX (505) 827-4984

**BILL RICHARDSON**  
GOVERNOR

**KATHERINE B. MILLER**  
CABINET SECRETARY

May 21, 2009

BY REGULAR MAIL | \_\_\_\_\_@GMAIL.COM|

RE: Your Request for Information from the S.H.A.R.E. Database

On May 21, 2009 the Department of Finance and Administration (DFA) received your request for a hard copy of the information sought in your February 5, 2009 request for public records. Your payment of \$204.75 has been received and the requested documents are enclosed.

If you have additional questions please contact the Department at 505-827-4985.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole Gillespie".

Nicole Gillespie  
Records Custodian



Date: May 21, 2009  
INVOICE # 1001

Public Records Request

| Public Records Request    | Job       | Payment Terms | Due Date |
|---------------------------|-----------|---------------|----------|
| State Payroll Information | Print Job | PAID          | PAID     |

| Qty       | Description                       | Unit Price | Line Total |
|-----------|-----------------------------------|------------|------------|
| 751 pages | Copies for Public Records Request | .25        | 187.75     |
|           | Cost of Staff Time                |            | 17.00      |
|           |                                   |            |            |
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|           |                                   |            |            |
|           |                                   |            |            |
| Subtotal  |                                   |            | 204.75     |
| Sales Tax |                                   |            |            |
| Total     |                                   |            | 204.75     |